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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,632	01/23/2004	James R. Lawler	ORAS002USACNT1 (J&JO-103U)	7747
27777 7590 06/23/2009 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
LEWIS, RALPH A				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
06/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/763,632

**Applicant(s)**

LAWTER ET AL.

**Examiner**

Ralph A. Lewis

**Art Unit**

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-27, 49 and 50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-27, 49 and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 3/27/2009
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **Indication of Allowability Withdrawn**

The indicated allowability of claims 22-27, 49 and 50 in the office action of 10/02/2008 is withdrawn in view of the present new grounds of rejection.

### **Rejections based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-27, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winkler (US 6,047,864) in view of Riebl et al (US 5,947,728) and Brizzolara et al (US 5,236,355).

Winkler discloses an apparatus for dispensing dental materials comprised of a barrel cartridge 12 having a body portion 62 and a tube portion 72 extending to a tip. The tube portion 72 including its tip is configured such that it is inherently capable of "being deformed to at least one cross-sectional geometry different from its initial cross-sectional geometry" with a pair of pliers. Nearly any tube/nozzle is capable of being deformed with the proper tools. The Winkler device includes a plunger 36 slidably received within the barrel 12 and is configured to contact external force applying member 34. Winkler discloses flexible flanges 40-46 extending from the end of the

external force applying member which lock in engagement with the barrel cartridge 12 which is reversed from the claimed arrangement where barrel cartridge includes flexible flanges that lock in engagement with the external force applying member. Such reversal of prior art coupling elements, however, is generally considered obvious to one of ordinary skill in the art. A prior art shirt does not become patentable merely because one reverses the buttons and button holes to the opposite sides. Moreover, such a reversal of prior art couplings would have been particularly obvious in view of Riebl et al who teaches in Figures 9-11 flexible flanges 21', 21'' that are inserted into and lock with an outer tubular member 5''' for a dispenser of dental materials. In regard to limitation requiring the use of the dispenser for dispensing dry particles, Brizzolara et al teach that it is desirable to dispense dry particle medicinal agents to a patient's periodontal pockets in order to induce long term therapeutic benefits. To have used the Winkler device for dispensing such prior art dry particles so that the patient could be treated for long term therapeutic benefits would have been obvious to one of ordinary skill in the art. In regard to claim 23, note the nub 23 taught by Riebl et al.

Claims 22-25, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzolara et al (US 5,236,355) in view of Egolf (US 4,909,788).

Brizzolara et al disclose a syringe for dispensing dental material to a periodontal pocket comprised of a barrel 2 having a body portion 10 and a tube portion 7b. The tube portion extends to a tip and is capable of being deformed with a pair of pliers. A plunger 4 is slidably housed in the barrel and includes a portion (the enlarged proximal

end) that is configured for contacting an external force applying member (i.e. a thumb). A plurality of dry particles 9 are positioned within the tip 7b. Brizzolara et al while disclosing a finger engaging flange 22 at the end of the barrel body portion 10, fail to disclose the particularly claimed flexible flanges for forming a locking engagement with a portion of an external force applying member. Egolf, however, for a similar syringe teaches that is desirable to attach the finger engaging flange 44 to the end of the barrel body portion 12 with flexible flanges 36 (note column 3, lines 30-34) so that the orientation of the finger flanges can be oriented by the user to adjust for the orientation of the syringe tip. To have provided the Brizzolara et al syringe with such an adjustable finger engaging flange so that the tip 7b can be oriented as desired by the practitioner for accessing periodontal pockets would have been obvious to one of ordinary skill in the art in view of the teaching by Egolf. In regard to claim 23, the "at least one nub" limitation is of such breadth that it reads on one of the flanges or part thereof.

#### **Prior Art**

Applicant's information disclosure statement of March 27, 2009 has been considered and an initialed copy enclosed herewith. The patent number 4813671 does not match the patentee, appears to be an error and has not been considered.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis  
June 21, 2009

/Ralph A. Lewis/  
Primary Examiner, Art Unit 3732